

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOHN ILIESCU, JR., AND SONNIA
ILIESCU, TRUSTEES OF THE JOHN
ILIESCU, JR. AND SONNIA ILIESCU
1992 FAMILY TRUST AGREEMENT
DATED JANUARY 24, 1992,

Plaintiffs,

v.

THE REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY,
A SPECIAL UNIT OF THE
GOVERNMENT; AND DOES I
THROUGH X INCLUSIVE,

Defendant.

Case No. 3:21-cv-00387-ART-CLB

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

I. SUMMARY

This federal action arises from underlying state litigation between Plaintiffs John Iliescu Jr. and Sonnia Iliescu (the "Iliescus") and Defendant The Regional Transportation Commission of Washoe County ("RTC"). In essence, the Iliescus argue that the value of their Property (Washoe County Assessor Parcel Number 014-063-07; the "Property") was diminished when RTC removed a driveway that connected the Property to South Virginia Street as part of a rapid transit project, and that they never received proper notice that the driveway would be removed. Thus, despite the fact that the effect of RTC's project on the value of the Property was extensively litigated in state court, the Iliescus argue that the impact of the driveway's removal on the value of their Property was never litigated. In response, RTC argues that the reason the alleged diminution in value of the Property due

1 to the driveway's removal was not expressly litigated in the state action was
2 because the Iliescus failed to oppose motions in limine and failed to bring
3 counterclaims for taking and inverse condemnation. Therefore, RTC avers, the
4 Iliescus' claims are barred by the doctrines of claim and issue preclusion because
5 they could have been, but were not, brought in the state action.

6 Before the Court is RTC's Motion for Partial Summary Judgment. (ECF No.
7 33). For the reasons discussed herein, the Court grants RTC's Motion in full.

8 **II. BACKGROUND**

9 On December 4, 2018, RTC mailed an appraisal report discussing the
10 Property to the Iliescus. (See ECF Nos. 41 at 7; 41-4 at 2). Sonnia Iliescu signed
11 a certified mail receipt on December 7, 2018, indicating receipt of the appraisal
12 report. (ECF No. 41-4 at 10-11). The appraisal report explained that "[i]n the after
13 condition [the Property] will lose access to one of the driveways located along
14 South Virginia Street." (ECF No. 41-3 at 12). The appraisal report included an
15 aerial photograph that indicated one driveway to the Property would be
16 eliminated in the after condition, as signified by a red arrow. (*Id.* at 13).

17 On January 22, 2019, RTC sent a letter via hand-delivery notifying the
18 Iliescus that the RTC Board would meet on February 15, 2019, to consider
19 acquiring a permanent easement on a parcel not at issue in this litigation, and a
20 temporary construction easement upon the Property. (ECF Nos. 33-1 at 3-4; 37-
21 1 at 2).

22 On February 15, 2019, the Iliescus attended the RTC Board Meeting they
23 received notice of in the January 22, 2019 letter. (ECF No. 41-1 at 13). The
24 Iliescus explained to the Board that they were "very concerned about permanently
25 losing Virginia Street access to one of their parcels because then the only entry
26 access would be from the alley." (*Id.*) Dale Ferguson, RTC Chief Legal Counsel
27 explained that "the area in question will be permanently blocked as per the design
28 of the project." (*Id.*) At this meeting, RTC adopted a "Resolution of Condemnation"

1 authorizing its counsel to commence condemnation proceedings to acquire the
2 easements via eminent domain. (ECF Nos. 33-1 at 4; 41-1 at 14).

3 RTC sued the Iliescus in state court on April 3, 2019, seeking a temporary
4 construction easement on the Property in addition to a permanent easement and
5 a temporary construction easement on another parcel. (*RTC of Washoe Cty. V.*
6 *John Iliescu Jr. et al.*, Case No. CV19-00753 in the Second Judicial District Court
7 of the State of Nevada (Washoe County) (the “State Action”))

8 On May 2, 2019, the Iliescus filed their Answer, in which they asserted no
9 counterclaims, *pro se*. (ECF No. 37-2).

10 One day later, on May 3, 2019, the Iliescus wrote a letter to Diane Kelling,
11 a legal assistant at RTC’s counsel explaining their frustration regarding RTC’s
12 intention to remove the driveway. (ECF No. 41-2 at 2). The Iliescus wrote
13 “[n]owhere in any of the documents that we have received have [RTC] ever
14 addressed the fact that they are taking away the only ingress and egress from
15 Virginia Street onto [the Property] and they state that future access to that parcel
16 will be in the alley at the rear of the property.” (*Id.*) The Iliescus continued,
17 “[p]lease review the initial proposal sent to us which points out *very clearly* the
18 permanent taking of the ingress-egress to [the Property].” (*Id.*) (emphasis added).
19 The Iliescus attached a facsimile of the same aerial photograph that was included
20 in the appraisal report—which the Iliescus received on December 7, 2018—to
21 their letter. (*Compare* ECF No. 41-2 at 3 *with* ECF No. 41-3 at 13).

22 In this federal litigation, John and Sonnia Iliescu each filed declarations
23 under penalty of perjury attesting that they did not know RTC intended to remove
24 the driveway access to the Property until after the Iliescus filed their answer on
25 May 2, 2019. (*See* ECF Nos. 37-3 at 3; 37-4 at 2).

26 During the State Action, the parties participated in a case conference and
27 submitted a joint conference report. (ECF No. 33-11 at 3). The report set the final
28 date to amend pleadings and the final date for initial disclosures of expert

1 witnesses as February 7, 2020. The report set the final date for disclosures of
2 rebuttal expert witnesses as March 9, 2020, and the parties further agreed that
3 discovery would close on May 8, 2020. (*Id.*) The district court incorporated these
4 dates into its scheduling order. (*Id.*)

5 The Iliescus failed to disclose their expert witness by the February 7, 2020
6 deadline. RTC subsequently brought a motion in limine seeking to preclude the
7 Iliescus from calling an expert witness at trial (hereinafter “motion in limine re
8 expert witness”). In opposing this motion in limine, the Iliescus argued that their
9 counsel had suffered an accidental fall and subsequently missed the expert
10 disclosure deadline. (*Id.* at 3-4). The Iliescus requested a 21-day extension in their
11 opposition, and subsequently requested a 45-day extension in a second
12 opposition. (ECF No. 33-11 at 4).

13 The Iliescus failed to disclose their expert witness by the deadline imposed
14 through their own motion for a 45-day extension of the expert disclosure
15 deadline. (*Id.*) RTC filed a supplemental reply in its support of its motion in limine
16 re expert witness arguing that the Iliescus’ failure to meet their own deadline
17 meant that the Iliescus should be prohibited from disclosing an expert even if the
18 district court granted the Iliescus’ request for an extension. (*Id.*) The Iliescus did
19 not object to RTC’s supplemental filing. (*Id.*)

20 While RTC’s motion in limine re expert witness was pending, RTC filed a
21 motion for summary judgment, arguing that the Iliescus had the burden of
22 proving damages to the Property and that they had no way to do so without an
23 expert witness. (*Id.* at 5).

24 The district court subsequently granted-in-part and denied-in-part RTC’s
25 motion in limine re expert witness. Importantly, the court denied the Iliescus’
26 extension request as moot because the Iliescus failed to disclose their expert
27 witness within their own proposed 45-day extension. The court’s ruling on the
28 motion in limine re expert witness barred the Iliescus from disclosing and

1 presenting an initial expert witness in the case. (ECF No. 33-11 at 5). At the same
2 time, the court extended the rebuttal expert deadline to May 22, 2020. (*Id.*)

3 While its motion for summary judgment was pending, RTC brought three
4 additional motions in limine. (*Id.*) First, RTC brought a motion in limine
5 requesting the court preclude the Iliescus from calling witnesses or presenting
6 evidence at trial (hereinafter motion in limine re evidence) after the Iliescus made
7 no disclosures under NRCP 16.1(a)(1). The district court granted this motion in
8 limine after the Iliescus failed to oppose it. (*Id.* at 5-6). Second, RTC brought a
9 motion in limine to prevent the Iliescus from offering any rebuttal experts in the
10 case (hereinafter motion in limine re rebuttal). The Iliescus did not timely oppose
11 the motion. (*Id.* at 6). When the district court granted RTC's motion for summary
12 judgment, it held that RTC's motion in limine re rebuttal was moot. (*Id.*) Third,
13 RTC filed a motion in limine to prevent the Iliescus from offering testimony
14 relating to inverse condemnation, a claim that the Iliescus had never asserted
15 (hereinafter motion in limine re inverse condemnation). (ECF No. 33-11 at 6). The
16 Iliescus' rebuttal expert, Anthony Wren ("Wren") concluded in his expert report
17 that the elimination of the driveway from South Virginia Street to the Property
18 would diminish the value of the Property by \$162,500. (*Id.*) The RTC argued that
19 this diminution in value could only be proven by a theory of inverse
20 condemnation, which the Iliescus never asserted. (*Id.*) The Iliescus failed to
21 oppose the motion in limine re inverse condemnation, and the district court
22 accordingly granted it. (*Id.* at 7).

23 In August 2020, the district court granted RTC's motion for summary
24 judgment. (ECF No. 33-7). The district court found that the Iliescus' notice of a
25 rebuttal expert "attempts to repackage Mr. Wren's initial expert report as a
26 rebuttal expert report, but the actual report attached to the Summary Judgment
27 Opposition is very clearly an initial expert report as it doesn't mention Plaintiff's
28 expert report. . . . Further, this Court is persuaded by [RTC's] argument that Mr.

1 Wren's evaluation is based upon the loss of access to South Virginia Street and
2 to claim damages on that basis [the Iliescus] would have needed to assert a
3 counterclaim for inverse condemnation. Defendants have asserted no such
4 counterclaim and the time for doing so has passed." (*Id.* at 9). The district court
5 granted RTC's motion for summary judgment because the Iliescus were precluded
6 from presenting evidence at trial due to their failure to oppose RTC's motion in
7 limine re evidence, and because the Iliescus "have failed to provide a proper
8 rebuttal expert witness report." (*Id.*) The district court found that the amount of
9 just compensation due to the Iliescus was \$15,995. (*Id.* at 10).

10 The Iliescus appealed the district court's decision to the Nevada Court of
11 Appeals. On October 21, 2021, the Court of Appeals upheld the district court's
12 decision in full. (ECF No. 33-11 at 14).

13 On August 27, 2021, the Iliescus initiated this action in federal court. (ECF
14 No. 4). The Iliescus bring five claims against RTC: 1) a takings claim under 42
15 U.S.C. § 1983 relating to the elimination of the driveway between the Property
16 and South Virginia Street; 2) an inverse condemnation claim relating to the
17 driveway; 3) an inverse condemnation claim relating to a drain that RTC placed
18 on the Property; 4) a trespass claim based on water, leaves, and garbage flowing
19 onto the Property as the result of a drain that RTC placed on the property; and
20 5) a private nuisance claim also based on the drain.

21 RTC filed its Motion for Partial Summary Judgment on August 12, 2022,
22 seeking judgment on the Iliescus' first two claims relating to the driveway. (ECF
23 No. 33 at 1). RTC argues that claim preclusion and issue preclusion both preclude
24 the Iliescus' first and second claims for relief as, RTC argues, the Iliescus could
25 have brought the takings and inverse condemnation claims relating to the
26 driveway as counterclaims in the State Action. (ECF No. 33 at 12, 15).

1 The Court agrees with RTC that the Iliescus' first and second claims for
2 relief are precluded under the doctrine of claim preclusion and grants RTC's
3 Partial Motion for Summary Judgment (ECF No. 33) on that basis.

4 **III. LEGAL STANDARD**

5 "The purpose of summary judgment is to avoid unnecessary trials when
6 there is no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S.*
7 *Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). Summary
8 judgment is appropriate when the pleadings, the discovery and disclosure
9 materials on file, and any affidavits "show there is no genuine issue as to any
10 material fact and that the movant is entitled to judgment as a matter of law."
11 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is "genuine" if there
12 is a sufficient evidentiary basis on which a reasonable fact-finder could find for
13 the nonmoving party and a dispute is "material" if it could affect the outcome of
14 the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
15 248-49 (1986). Where reasonable minds could differ on the material facts at
16 issue, however, summary judgment is not appropriate. *See id.* at 250-51. "The
17 amount of evidence necessary to raise a genuine issue of material fact is enough
18 'to require a jury or judge to resolve the parties' differing versions of the truth at
19 trial.'" *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First*
20 *Nat'l Bank v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). In evaluating a
21 summary judgment motion, a court views all facts and draws all inferences in the
22 light most favorable to the nonmoving party. *See Kaiser Cement Corp. v. Fishbach*
23 *& Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986) (citation omitted).

24 The moving party bears the burden of showing that there are no genuine
25 issues of material fact. *See Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th
26 Cir. 1982). Once the moving party satisfies Rule 56's requirements, the burden
27 shifts to the party resisting the motion to "set forth specific facts showing that
28 there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. The nonmoving

1 party “may not rely on denials in the pleadings but must produce specific
 2 evidence, through affidavits or admissible discovery material, to show that the
 3 dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991),
 4 and “must do more than simply show that there is some metaphysical doubt as
 5 to the material facts.” *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002)
 6 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
 7 (1986)). “The mere existence of a scintilla of evidence in support of the plaintiff’s
 8 position will be insufficient[.]” *Anderson*, 477 U.S. at 252.

9 When determining the preclusive effect of state judgments, federal courts
 10 look to the preclusion law of that state in which the final judgment was rendered.
 11 *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985).

12 Nevada law concerning res judicata is consistent with federal law. “The
 13 doctrine is intended to prevent multiple litigation causing vexation and expense
 14 to the parties and wasted judicial resources by *precluding parties from relitigating*
 15 *issues they could have raised* in a prior action concerning the same controversy.”
 16 *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994)
 17 (emphasis added), *holding modified on other grounds by Exec. Mgmt., Ltd. v. Ticor*
 18 *Title Ins. Co.*, 114 Nev. 823, 963 P.2d 465 (1998).

19 Satisfying either claim or issue preclusion will suffice to grant summary
 20 judgment. *Kuptz-Blinkinsop v. Blinkinsop*, 136 Nev. 360, 364–65, 466 P.3d 1271,
 21 1275 (2020) (“Summary judgment is appropriate when [claim or] issue preclusion
 22 bars a claim.”) (alteration in original).

23 **IV. DISCUSSION**

24 RTC seeks summary judgment on the Iliescus’ first and second claims: a
 25 takings claim under 42 U.S.C. § 1983 relating to the elimination of the driveway
 26 between the Property and South Virginia Street; and an inverse condemnation
 27 claim relating to the driveway. (ECF No. 33 at 1-2). At oral argument, the
 28 Iliescus conceded that these counterclaims could have been brought in the

1 underlying action. The district court also found that the Iliescus would have
2 needed to assert a counterclaim for inverse condemnation to claim damages
3 based on the loss of access to South Virginia Street from the Property. (ECF No.
4 33-7 at 9). Plaintiffs do not bear the burden of alerting defendants to applicable
5 counterclaims. The State Action was the time and place to make the arguments
6 that the Iliescus now offer here.

7 In Nevada, the elements for claim preclusion are: “(1) the parties or their
8 privies are the same, (2) the final judgment is valid, and (3) the subsequent
9 action is based on the same claims or any part of them that were *or could have*
10 *been brought in the first case.*” *Five Star Capital Corp.*, 124 Nev. at 1054, 194
11 P.3d at 713 (emphasis added).

12 Here, all three of these elements are met. First, the parties are the same.
13 Second, the final judgment is valid, as Nevada courts treat summary judgment
14 orders as final judgments and there was a final judgment in the underlying
15 state action, which was then appealed and affirmed in its entirety. *See Lee v.*
16 *GNLV Corp.*, 116 Nev. 424, 428, 996 P.2d 416, 418 (2000). Third, the taking
17 and inverse condemnation actions could have been brought as counterclaims in
18 the underlying state proceeding, and the Iliescus failed to assert these claims.

19 In their opening brief before the Nevada Supreme Court, the Iliescus
20 conceded that they neither asserted an inverse condemnation claim for the
21 driveway, nor sought leave from the state court to assert such a claim. (ECF No.
22 33-10 at 5). In this action, the Iliescus also concede that they did not assert an
23 inverse condemnation claim for the driveway in the state action. (ECF No. 37 at
24 6).

25 The Iliescus argue that their failure to assert the inverse condemnation
26 and takings counterclaims in the State Action is not fatal on two alternative
27 grounds: under the after-acquired claim exception to the compulsory
28 counterclaim rule, or based on equitable exceptions to the doctrine of claim

preclusion in the Restatement (Second) of Judgments. (ECF No. 37 at 11-13).
The Court addresses each argument in turn.

A. The claims at issue were compulsory.

The question before the Court is whether the takings and inverse condemnation claims were compulsory or fit the after-acquired claim exception to the compulsory counterclaim rule. NRCP 13(a), which governs compulsory counterclaims, provides as follows:

- (1) In General. A pleading must state as a counterclaim any claim that—
at the time of its service—the pleader has against an opposing party if
the claim:
 - a. Arises out of the transaction or occurrence that is the subject
matter of the opposing party's claim; and
 - b. Does not require adding another party over whom the court
cannot acquire jurisdiction.

NRCP 13(a). Here, the takings and inverse condemnation claims unquestionably arose out of the transaction or occurrence that is the subject matter of the opposing party's claims and did not require adding an additional party over whom the state court could not acquire jurisdiction.

The after-acquired exception allows a party a chance to litigate what would have been a compulsory claim if they did not know about the claim in time to plead it. In Nevada “[a]n after-acquired claim, even if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim, need not be pleaded supplementally; the after-acquired claim is not considered a compulsory counterclaim under Rule 13(a) and a failure to interpose it will not bar its assertion in a later suit.” *Mendenhall v. Tassinari*, 133 Nev. 614, 622, 403 P.3d 364, 371 (2017). “When a party does not know of a claim until after its pleading, it constitutes an after-acquired claim.” *Id.* (quoting *Loveland Essential Grp., LLC v. Grommon Farms, Inc.*, 318 P.3d 6, 11, 14 (Colo. App. 2012)). A “claim is not an ‘after-arising claim’ if the lack of knowledge was due to their own negligence or lack of reasonable diligence.” *Id.*

1 The Iliescus argue that “[a]t the time its Answer was filed, Iliescu had no
2 knowledge of RTC’s intention to eliminate the driveway. . . .” (ECF No. 37 at 11).
3 The Iliescus further argue that their lack of knowledge about the driveway was
4 not due to negligence or a lack of reasonable diligence because RTC did not
5 include the driveway in its description of the property over which RTC planned
6 to exercise eminent domain. This argument is not supported by the record
7 which shows that the Iliescus knew about RTC’s intention to remove the
8 driveway but failed to litigate available takings and inverse condemnation
9 claims.

10 The Iliescus knew about their takings and inverse condemnation claims
11 months before they filed their Answer in the state court action. The Iliescus
12 attended a February 15, 2019 RTC Board Meeting, and noted their concerns
13 about permanently losing Virginia Street access to the Property. They were told
14 that the area in question would be permanently blocked as per the design of the
15 project. (ECF No. 41-1 at 13-14). This shows that Iliescus knew about RTC’s
16 intention to permanently remove a driveway between South Virginia Street and
17 the Property about two months prior to RTC filing the state action on April 3,
18 2019, and about three months prior to their filing the Answer on May 2, 2019.
19 In a letter dated the following day, on May 3, 2019 (ECF No. 41-2 at 3), the
20 Iliescus wrote to RTC’s counsel expressing concern over the driveway’s
21 elimination and included a picture from the RTC’s December 7, 2018, report
22 indicating the driveway’s removal. (*Compare* ECF No. 41-2 at 3 *with* ECF No.
23 41-3 at 13). Because the Iliescus knew about their counterclaims when they
24 filed their Answer in state court, the after-acquired claim exception does not
25 apply.

26 Even accepting at face value the Iliescus’ argument that they had no
27 knowledge of RTC’s intention to remove the driveway at the time they filed their
28 Answer, any lack of knowledge was plainly “due to their own negligence or lack

1 of reasonable diligence.” *Mendenhall*, 403 P.3d at 371. As the Iliescus
2 themselves explained, the “initial proposal sent to us [on December 7, 2018] . . .
3 points out *very clearly* the permanent taking of the ingress-egress to [the
4 Property].” (ECF No. 41-2 at 2) (emphasis added). The Iliescus then attended a
5 RTC Board Meeting on February 15, 2019 where they expressed their concerns
6 about the removal of the driveway and were told that the “area in question
7 would be permanently blocked as per the design of the project.” (ECF No. 41-1
8 at 13). The Iliescus clearly had constructive—if not actual—knowledge of RTC’s
9 intent to eliminate the driveway in question months before they filed their
10 Answer on May 2, 2019. The after-acquired claim exception therefore does not
11 apply. Accordingly, the Court finds that the claims at issue here were
12 compulsory under NRCP 13(a) and that claim preclusion applies. Therefore, the
13 Court grants RTC’s Motion for Partial Summary Judgment (ECF No. 33) on that
14 basis.

15 **B. The equitable exceptions raised are inapplicable here.**

16 For the sake of completeness, the Court discusses the equitable
17 Restatement exceptions the Iliescus raise in their Response (ECF No. 37) to
18 RTC’s Partial Motion for Summary Judgment. (ECF No. 33).

19 First, the Iliescus argue that the inverse condemnation and takings
20 claims falls into the equitable exception enumerated in § 26(1)(d) of the
21 Restatement (Second) of Judgments, which permits a second claim to be
22 brought where “the judgment in the first action was plainly inconsistent with
23 the fair and equitable implementation of a statutory or constitutional scheme.”
24 (ECF No. 37 at 13). Comment e on § 26(1)(d) of the Restatement (Second) of
25 Judgments explains that a second action is permissible when “[t]he
26 adjudication of a particular action may in retrospect may appear to create such
27 inequities in the context of a statutory scheme as a whole that a second action
28 to correct the inequity may be called for even though it would normally be

1 precluded as arising upon the same claim.” Restatement (Second) of Judgments
2 § 26 cmt. e (1982).

3 As support for the application of the exception set out in § 26(1)(d), the
4 Iliescus focus on the state court’s refusal to allow the Iliescus to “introduce the
5 wide variety of factors diminishing the value of its property. . . .” (*Id.*). As the
6 Nevada Court of Appeals noted, however, the state district court precluded
7 evidence of their claims because the Iliescus failed to disclose an expert witness
8 by both the court-imposed deadline and the Iliescus’ own suggested deadline.
9 The district court accordingly barred them from disclosing an initial expert in
10 the case, and the Iliescus did not request the district court reconsider its ruling
11 to deny them an initial expert.

12 The Iliescus also failed to oppose the RTC’s motions in limine to preclude
13 the Iliescus from presenting any testimony or argument related to inverse
14 condemnation, which the Iliescus admit they never asserted in the state action.
15 RTC brought this motion in limine because the Iliescus’ rebuttal expert,
16 Anthony Wren, acknowledged in his report that there was no permanent taking
17 as to the Property, but estimated damages in the amount of \$162,500 resulting
18 from the removal of the driveway. (ECF No. 33-11 at 6). RTC argued that these
19 damages could only be arrived at through inverse condemnation in a motion in
20 limine, which the Iliescus failed to oppose. The state district court judge found
21 that motion in limine moot, but opined that “this Court is persuaded by
22 Plaintiff’s argument that Mr. Wren’s evaluation is based upon the loss of access
23 to South Virginia Street and to claim damages on that basis Defendants would
24 have needed to assert a counterclaim for inverse condemnation. Defendants
25 have asserted no such counterclaim and the time for doing so has passed.”
26 (ECF No. 33-7 at 9).

27 The state court’s refusal to allow the Iliescus to present evidence related
28 to the diminution in value of their property was entirely due to the Iliescus’ *own*

1 *conduct* in the litigation. Therefore, the state court’s judgment was not “plainly
2 inconsistent with the fair and equitable implementation of a statutory or
3 constitutional scheme.”

4 Second, the Iliescus argue that the inverse condemnation claim falls into
5 the equitable exception enumerated in § 26(1)(e) of the Restatement (Second) of
6 Judgments where “[f]or reasons of substantive policy in a case involving a
7 continuing or recurring wrong, the plaintiff is given an option to sue once for
8 the total harm, both past and prospective, or to sue from time to time for the
9 damages incurred to the date of suit, and chooses the latter course”
10 Restatement (Second) of Judgments § 26(e) (1982).

11 The Iliescus argue that § 26(1)(e) applies because the Iliescus “have
12 suffered the ongoing economic harm of being deprived of just compensation.”
13 (ECF No. 37 at 13). This misstates the history of this case. The Iliescus sued
14 once for the total harm resulting from RTC’s activities, were awarded \$15,955 in
15 the State Action, and the Nevada Court of Appeals upheld the district court. As
16 discussed, the Iliescus were not permitted to submit their own evidence
17 regarding the impact on the value of the Property caused by the removal of the
18 driveway due to their own legal mistakes in the state action. This situation is
19 unlike those discussed in the comments to § 26(1)(e) because the only claims
20 based on *ongoing* issues are related to the drain RTC installed during the
21 project, and claims involving that drain are not the subject of RTC’s Partial
22 Motion for Summary Judgment. (ECF No. 33).

23 In sum, neither equitable exception for circumventing claim preclusion
24 applies because the Iliescus were aware of their takings and inverse
25 condemnation claims before the state action was filed and failed to plead or
26 effectively pursue them.

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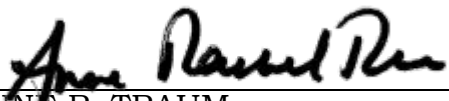
1 **V. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to
3 several cases not discussed above. The Court has reviewed these arguments and
4 cases and determines that they do not warrant discussion as they do not affect
5 the outcome of the motion before the Court.

6 For the foregoing reasons, the Court hereby grants Defendant Regional
7 Transportation Commission of Washoe County's Motion for Partial Summary
8 Judgment (ECF No. 33).

9 It is so ordered.

10 DATED THIS 13th Day of June, 2023.

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13 ANNE R. TRAUM
14 UNITED STATES DISTRICT JUDGE
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